

§ 536.25

Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27-162 and this part. An ACO will direct such investigation to the extent deemed necessary.

(2) CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area. (See § 536.3(f).)

(3) Claims incidents involving patients arising from treatment by a health care provider in an Army medical treatment facility (MTF), including providers defined in 536.23(b)(4)(ii), will be investigated by a claims judge advocate (CJA), medical claims judge advocate (MCJA), or claims attorney rather than by a unit claims officer.

(4) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including active, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installations' and activities' claims responsibilities. It will institute a serious claims incident reporting system.

(b) *Command claims service responsibility.* A command claims service is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or for any incidents within the authority of any foreign claims commission (FCC) it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A command claims service will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander USARCS.

(c) *USARCS responsibility.* USARCS exercises technical supervision over all claims offices, providing guidance on specific cases throughout the claims process, including the method of inves-

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tigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims services', an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories and possessions, where there is no command claims service or ACO, USARCS is responsible for investigation and for appointment of FCCs.

NOTE TO § 536.24: See the parallel discussion at DA Pam 27-162, paragraph 2-3.

§ 536.25 Procedures for accepting claims.

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in DA Pam 27-162, paragraph 2-4. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27-162, paragraphs 2-15 and 2-17.

§ 536.26 Identification of a proper claim.

(a) A claim is a writing that contains a sum certain for each claimant and that is signed by each claimant, or by an authorized representative, who must furnish written authority to sign on a claimant's behalf. The writing must contain enough information to permit investigation. The writing must be received not later than two years from the date the claim accrues. A claim under the Foreign Claims Act (FCA) may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within two years, provided that it is reduced to writing not later than three years from the date of accrual. A claim may be transmitted by facsimile or telegram. However, a copy of an original claim must be submitted as soon as possible.

(b) Where a claim is only for property damage and it is filed under circumstances where there might be injuries, the CJA should inquire if the claimant desires to split the claim as discussed in § 536.60.

(c) Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury, or Death). When the claim is not presented on an SF 95, the claimant will be requested to complete an SF 95 to ease investigation and processing.

(d) If a claim names two claimants and states only one sum certain, the claimants will be requested to furnish a sum certain for each. A separate sum certain must be obtained prior to payment under the Federal Tort Claims Act (FTCA), Military Claims Act (MCA), National Guard Claims Act (NGCA) or the FCA. The Financial Management Service will only pay an amount above the threshold amount of \$2,500 for the FTCA, or \$100,000 for the other statutes.

(e) A properly filed claim meeting the definition of "claim" in paragraph (a) of this section tolls the two-year statute of limitations (SOL) even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF 95 or in the Attorney General's regulations implementing the FTCA, 28 CFR 14.1—14.11. However, refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other subparts of this part.

(f) Receipt of a claim by another federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

(g) The guidelines set forth in federal FTCA case law will apply to other subparts of this part in determining whether a proper claim was filed.

NOTE TO § 536.26: See the parallel discussion at DA Pam 27-162, paragraph 2-5.

§ 536.27 Identification of a proper claimant.

The following are proper claimants:

(a) *Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the

owner's name. As used in this part, the term "owner" includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property, is a proper claimant. When notice of divided interests in real property is received, the claim should if feasible be treated as a single claim and a release from all interests must be obtained. This includes both the owner and tenant where both claim.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable subpart. When notice of divided interests in personal property is received, the claim should if feasible be treated as a single claim; a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

(b) *Claims for personal injury or wrongful death—*(1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative or, where the claimant is a minor, by a parent or a person in loco parentis. However, determine whether the claimant is a proper claimant under applicable state law or, if considered under the MCA, under § 536.77. If not, the claimant should be so informed in the acknowledgment letter and requested to withdraw the claim. If not withdrawn, deny the claim without delay. An example is a claim filed on behalf of a minor for loss of consortium for injury to a parent where not permitted by state law. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by a "volunteer," meaning one who has no legal or contractual obligation, yet voluntarily pays damages on behalf of an injured party and then seeks reimbursement for their economic damages by filing a claim. See paragraph (f) (3) of this section.

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or